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Commenter: KMC Telecom Inc.
Applicant: BellSouth
State: South Carolina
Date: November 14, 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Application by BellSouth	)	
Corporation et al. for Provision of	)	CC Docket No. 97-208
In-Region, InterLATA Services in	)	
South Carolina	)	

REPLY COMMENTS OF KMC TELECOM INC. IN OPPOSITION TO BELLSOUTH'S APPLICATION FOR INTERLATA AUTHORITY IN SOUTH CAROLINA

KMC Telecom Inc.("KMC"), through undersigned counsel, hereby submits its reply comments on the Section 271 application for in-region interLATA authority filed by BellSouth Corporation et al. ("BellSouth") on September 30, 1997.

After BellSouth's application was filed, the Eighth Circuit held that where a CLEC orders unbundled network elements that are connected in the ILEC's network, the ILECs may disconnect the elements before leasing them to the CLEC. Iowa Utilities Board v. F.C.C., Order on Petitions for Rehearing (8th Cir. Nos. 96-3321 et al., October 14, 1997). BellSouth's application makes it plain that it intends to exercise whatever legal right it may have to prevent CLECs from obtaining combined elements at cost-based rates. BellSouth Brief at 39-40. KMC disagrees with the Eighth Circuit decision and has joined in a petition challenging it. However, for purposes of these comments, KMC assumes that the decision presently binds the Commission.

While the ILECs, under the Eighth Circuit's decision, now have the right to disconnect combined network elements ordered by a CLEC, they must still comply with the requirement of section 251(c)(3) to provide such elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Indeed, the Eighth Circuit made it plain that it expected the ILECs to afford the CLECs whatever access to the ILEC network they need to enable them to recombine the disconnected elements. Iowa Utilities Board v. FCC, Order on Rehearing (Oct. 14, 1997) ("the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them").

This Commission has jurisdiction to define what access the ILECs must provide in order to fulfill their obligation under section 251(c)(3), in cases where the ILEC has disconnected formerly combined elements prior to providing them to a requesting carrier. It has this authority for two reasons. First, compliance with section 251(c)(3) is part of the competitive checklist. 47 U.S.C. § 271(c)(2)(B)(ii). Second, the Commission has rulemaking authority to define the ILECs' duties under section 251(c)(3) -- as the Eighth Circuit itself recognized by reviewing on the merits the Commission's rules implementing section 251(c)(3). Iowa Utilities Board v. F.C.C., 120 F.3d 753, 813-15 (8th Cir. 1997).

BellSouth's application is almost totally silent on how it proposes to implement its obligation to provide elements in a manner allowing the requesting carrier to provide telecommunications service, where the ILEC has disconnected the elements. Section IIB of BellSouth's SGAT states that "[p]hysical and virtual collocation are available for interconnection

and access to unbundled elements as described in Section II." But, as we now demonstrate, there is no requirement in the Act for CLECs to go through the collocation process for the temporary entry needed to reconnect disconnected elements. In addition, the collocation process as it presently exists imposes significant competitive barriers, if applied to situations where the CLECs needs only temporary entry to reconnect network elements that the CLEC has disconnected.

1. BellSouth should make it clear that it will not require CLECs to collocate in order to reconnect combined elements which it has disconnected.

Section 251(c)(6) of the 1996 Act governs the collocation process. Both the statutory language and the legislative history show that collocation is intended to deal with the physical placement of CLEC equipment on ILEC premises in order to interconnect the CLEC network to the ILEC network. Collocation was not intended, and is neither required nor appropriate, for the temporary entry that would be required for CLECs to reconnect formerly combined network elements that the ILEC has disconnected prior to providing them to the CLEC.

Section 251(c)(6) imposes on ILECs the duty to provide "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6) (emphasis added). Because "equipment" takes space, section 251(c)(6) provides that physical collocation is not required if "space limitations" preclude it. None of this has the slightest relevance to the process of reconnecting disconnected unbundled elements, which would require temporary access of CLEC

technicians to the ILEC network -- not physical placement of CLEC equipment on ILEC property.

Section 251(c)(6) resulted from a court decision ruling that the FCC was not authorized by the Communications Act to require physical collocation. Bell Atlantic Telephone Companies v. F.C.C., 24 F.3d 1441 (D.C.Cir. 1994), discussed in House Rep. No. 104-204, 104th Cong. 1st Sess., at 73, reprinted at 1996 U.S. Code Cong. & Adm. News at 39. In Bell Atlantic, the D.C. Circuit interpreted "physical collocation' to mean "a license to exclusive physical occupation of a section of the LECs' central offices." Id., 24 F.3d at 1446 (emphasis added). The court concluded that conferring an "exclusive right of physical occupation" on the CLECs "would seem necessarily to 'take' [the ILECs'] property," requiring just compensation under the Constitution. Id. The court cited a Supreme Court decision which drew a constitutional distinction between "permanent occupation and a temporary physical invasion" -- with only the former requiring just compensation. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 434 (1982), discussing PruneYard Shopping Center v. Robins, 447 U.S. 74 (1980).

Temporary access of a CLEC technician to the ILEC network, to reconnect network elements the ILEC has disconnected, is a "temporary physical invasion" rather than a "permanent occupation" of ILEC premises. As such, it does not require compensation, either under the Constitution or the statutory collocation procedure.

This Commission's regulations confirm that the collocation procedure is a procedure for the permanent placement of CLEC equipment on ILEC premises -- not for temporary access of CLEC technicians to the ILEC network. For example, the regulations address the types of CLEC

equipment that may be collocated (47 C.F.R. § 51.323(b), (c), (d)(3), (d)(4)); allocation of space (§ 51.323(f)); denial of physical collocation because of space limitations (§ 51.321(e), (f)); construction of physical collocation arrangements (§ 51.323(j)); interconnection between the equipment of different collocating carriers (§ 51.323(h); and connection of the CLEC's equipment to leased unbundled network transmission elements (§ 51.323(g)). None of this has the slightest relevance where the CLEC requires only the temporary access of its technician to reconnect elements the ILEC has disconnected.

The regulations also provide -- as does the statute -- for denial of collocation for reasons of space or technical feasibility. 47 U.S.C. § 251(c)(6); 47 C.F.R. § § 51.323(a)-(f). But space is not a problem when the only issue is temporary access of a CLEC to reconnect disconnected elements. And if the elements were previously connected in the ILEC network, then technical feasibility also should not be a problem -- unless the ILEC has disconnected them in a manner rendering reconnection infeasible, in which case the ILEC would have violated its duty under section 251(c)(3) to provide unbundled elements in a manner allowing the CLEC to combine them.

Indeed, even where the present collocation regulations address the security issue -- an issue which might also arise in situations of temporary access for CLEC technicians -- the Commission's regulations address only "security arrangements to separate a collocating telecommunications carrier's space from the incumbent LEC's facilities." 47 C.F.R. § 51.323(i). This confirms that the collocation procedure addresses only the physical location of CLEC equipment in ILEC space -- not the temporary access of CLEC technicians.

In short, collocation is not required in order to provide CLEC technicians temporary access to the ILEC network to reconnect disconnected network elements. Yet BellSouth has not stated what other procedure it proposes to follow. Until it does so, the Commission is not in a position to assess whether the access provided will be sufficient to comply with BellSouth's obligation under section 251(c)(3) to provide network elements in a manner allowing the requesting carrier to combine them in order to provide telecommunications service.

2. If collocation is required, the Commission must impose limitations to ensure that the collocation procedures are consistent with BellSouth's obligation to provide the CLECs with an opportunity to recombine disconnected network elements.

The attached affidavit of Robert W. Walker explains a number of problems which would arise if BellSouth were to require the collocation procedure in its present form as a precondition to the temporary access CLEC technicians would need to reconnect disconnected network elements. This Commission's undoubted authority to define the ILECs' obligation under section 251(c)(3) includes the authority to require collocation procedures that resolve these problems in order to insure that CLECs receive a realistic opportunity to recombine disconnected network elements in a manner that enables them to provide telecommunications service.

Walker explains that if collocation were required for the temporary access CLEC technicians need to reconnect elements disconnected by the ILECs, there will be a vast increase in the number of collocation sites required -- since each CLEC will require collocation not only at the point where its network interconnects with the ILEC's network, but also at any other point where unbundled combined elements it has purchased might interconnect. Walker Aff't ¶ 5.

With the proliferation of collocation sites will come an increase in space shortages at ILEC wire centers -- particularly if BellSouth (like the other ILECs) follows its present practice of requiring each collocated site to be at least 100 square feet. Walker Aff't ¶¶ 6, 7.[1] Under present rules, if space runs out the ILEC must offer virtual collocation. 47 C.F.R. § 51.323(e). But as Walker points out, while virtual collocation may be perfectly feasible for interconnection between the CLEC and ILEC networks, it would be useless when the need is to reconnect a loop and a switch -- in that case, physical access to the ILEC wire center is absolutely required. Walker Aff't ¶ 8.

In addition, as Walker points out, the collocation process typically has taken three to four months. That a period of time may be tolerable where collocation is a one-time event that occurs when the CLEC first enters the local market. But it is not tolerable if the procedure must be repeated every time a CLEC seeks to sign up a new customer which requires service at a location reachable only through a combination of unbundled elements. Walker Aff't ¶ 10.

Finally, as Walker points out, physical collocation typically involves significant nonrecurring charges. Thus BellSouth's SGAT requires an application fee of $3,850, a "Space Construction Fee" of $4,500, and an unspecified "Space Preparation Fee." SGAT Atch. A p. 1. Such fees are excessive even when incurred as a one-time event in each local market. They are outrageous if collocation is needed every time the CLEC places an order for combined network elements involving an ILEC wire center not involved in its previous orders. BellSouth states in a conclusory fashion that its non-recurring charges "are based on cost, as required by the Act."

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[1] The record contains a copy of the BellSouth-Sprint Interconnection Agreement in Florida, which assesses a "Space Construction Fee" in 100 square-foot increments. Sprint Comments, Exh. C p. 80.

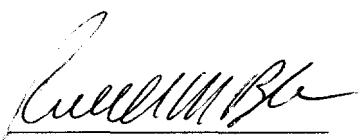
Varner Aff't ¶ 78. But it has not explained how charges formulated to address the costs involved in collocating equipment relate to the very different situation of providing temporary access for CLEC technicians to reconnect disconnected network elements.

Until BellSouth provides a satisfactory explanation of whether it plans to require collocation in these circumstances and how its collocation procedure would work, the Commission is not in a position to address these questions and cannot conclude that BellSouth has satisfied its obligation under section 251(c)(3) to provide network elements in a manner giving the CLEC a realistic opportunity to combine them to provide telecommunications service.

CONCLUSION

BellSouth's application for interLATA authority in South Carolina should be denied.

Respectfully submitted,



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Dated: November 14, 1997

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ATTACHMENT

Affidavit of Robert W. Walker

AFFIDAVIT OF ROBERT W. WALKER

I, Robert W. Walker, being first duely sworn, do hereby depose and state as follows:

1. I am an independent consultant, engaged by KMC and others to assist in the technical aspects of interconnection agreements with the Incumbent local exchange carriers (ILECs). I have my own company, Comsource, Inc., based in Glen Ellyn, Illinois. During the last year I've worked on such agreements with Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, Puerto Rico Telephone Company, Sprint, Southwestern Bell and US West.

   I have thirty-eight years experience in the telecommunications industry, with thirty-three of those years with Illinois Bell and Ameritech in a wide range of executive and technical positions. My assignments included Director of Advanced Technology Deployment, Director of Technology for Ameritech Development Corporation Director of Transmission for Illinois Bell and finally, Director of Transport Planning, for Illinois Bell the position I held prior to my departure from Ameritech in 1993.

2. In order to offer telecommunications service over a wide area, it is often necessary for competitive carriers to combined unbundled network elements from the ILEC to satisfy customer requirements. For example, a business customer whose main offices are served by a competitive carrier using the carrier's own facilities may also want that carrier to provide service to one or more remote locations. While the main offices are sufficiently close to be connected directly to the CLEC's facilities, it is not uncommon for a business to also want service to a remote location, e.g., a warehouse or sales office that is not close to the CLEC's own facilities. To provide service to such locations the CLEC typically deploys digital loop carrier (DLC) and purchases unbundled two or four-

wire local exchange loops and interoffice transport facilities from the ILEC. These local loop facilities are typically interconnected to interoffice transport facilities at the ILEC wire center serving the remote location.

3. There are many variations of this basic situation. For example, a competitive carrier may want to obtain unbundled voice-grade local exchange circuits and connect them to unbundled switch ports, both provided by the ILEC. This is for the purpose of providing service to a business with several locations by a single carrier with a single billing agreement, where it is not possible to serve all the customers' locations with the competitive carrier's own facilities.

4. There are many such circuits presently in service today throughout the industry. This affidavit addresses the problems that will arise should the incumbent carrier refuse to connect, or insist on disconnecting, the connections that are currently in service between the separate unbundled elements in these circuits.

5. If the incumbent carrier insists the competitive carrier collocate at each site where reconnection of formerly combined unbundled elements is required, there will be a vast increase in the number of collocated sites and a significant change in the nature and function of the collocation site. That is because a competitive carrier will have to collocate not only at the point where its network interconnects with the ILEC's, but also will have to collocate at any point where it is necessary to combine unbundled network elements in order to construct an end-to-end circuits reaching remote locations. Obviously, in some locations collocation may be necessary in <u>all</u> end offices.

6. I am advised that BellSouth imposes constructions charges based upon a minimum collocation space of 100 square feet. That may be a reasonable requirement for collocation as presently in use, to achieve interface between the competitive carrier's network and the incumbent's. However, if collocation is required merely to provide interconnection of unbundled elements, then 100 square feet minimum is massive overkill.

For example, interconnection of a voice-grade local exchange loop with a ILEC switch port, could require a simple terminal block in the collocation area, which could be mounted on a single 19 or 23-inch relay rack as is shown in sketch "A". A standard 23-inch, seven foot self-supporting relay rack (Newton Instrument Company Fig 4013B) requires a mounting space of 15 inches by 24-5/16 inches or about 2.5 square feet. Such a relay rack would mount only terminal blocks to facilitate the interconnection of unbundled elements. No electronics or other "active" equipment would be mounted in this bay. A typical configuration is shown in sketch "B". In such a situation, a 100 square foot collocation cage containing a single interconnection would be mostly wasted empty space.

Even this modest arrangement is overkill, since the cross-connect block could be prewired and mounted on the ILEC's main distributing frame (MDF). No access by the CLEC would be necessary and the terminal assignments could be made on the service request.

7. Indeed, even in the present situation, space is limited and some ILECs' wire center buildings have run out of space for collocation. With the likely proliferation of collocation requests resulting from the ILECs' newfound right to disconnect already combined elements, it is reasonable to anticipate that the space problem will be exacerbated.

8. Under present rules, when space is not available for physical collocation, the ILEC is required to provide virtual collocation. However, these rules were designed for the collocation required to achieve inter-network connection. In that situation, where the networks cannot be connected at a particular site, it is feasible to interconnect at an alternate location. But when the interconnection of formerly combined unbundled elements is the issue, frequently it can only be done at a single site, and a physical presence at the ILEC wire center is required. For example, when a local exchange loop is connected to an ILEC switch, that can only be done where the switch is located. Virtual collocation is simply not possible. That leaves open the issue of how connection between unbundled elements will be handled when space for

physical collocation is exhausted.

9. In its collocation agreement, BellSouth (and every other ILEC to my knowledge) allows only a single tenant for every collocation space. This restriction makes it impossible to maximize utilization of the existing space, and increases the possibility that proliferating requests for collocation sites at ILEC wire centers will exhaust the available collocation space.

10. Another difficulty is the time typically taken to negotiate a collocation agreement with BellSouth. I am advised that at present it takes three months to four months. This may not be unreasonable where collocation is for the purpose of connecting the competitive carrier's network to the ILEC's network, since this is an event that only happens once at each time the competitive carrier prepares to enter the market in a particular LATA. However, if collocation is needed at every wire center where a new customer may have a facility needing service, the resulting delay will be unacceptable to most customers and would be a serious obstacle to the customer signing with a competitive carrier.

11. The present schedule of collocation charges involves several substantial charges that are insensitive to the amount of space required. For example, BellSouth requires an application fee of $3,850.00 for physical collocation, construction charges of $4,500.00. The practical effect, where a small amount of space is required, is to force the competitive carrier requesting collocation to pay an exorbitant amount for the particular space utilized. Often, the excess cost of collocation could preclude offering service economically.

12. In light of the recent court decision on combining unbundled network elements (UNEs), it's evident that collocation, as it is presently defined by most of the ILECs, is unable to fill its new role of combining UNEs. Clearly, the situation is now different and there is a need to formulate new rules for collocation for the express purpose of combining UNEs.

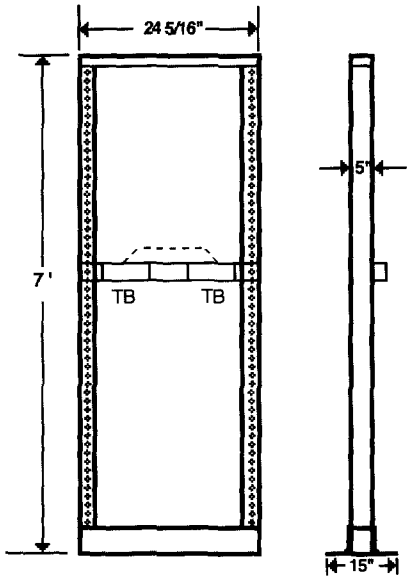
I hereby swear that the forgoing is true and correct to the best of my information and belief.

Robert W. Walker

Subscribed and sworn to before me this
12th day of November, 1997

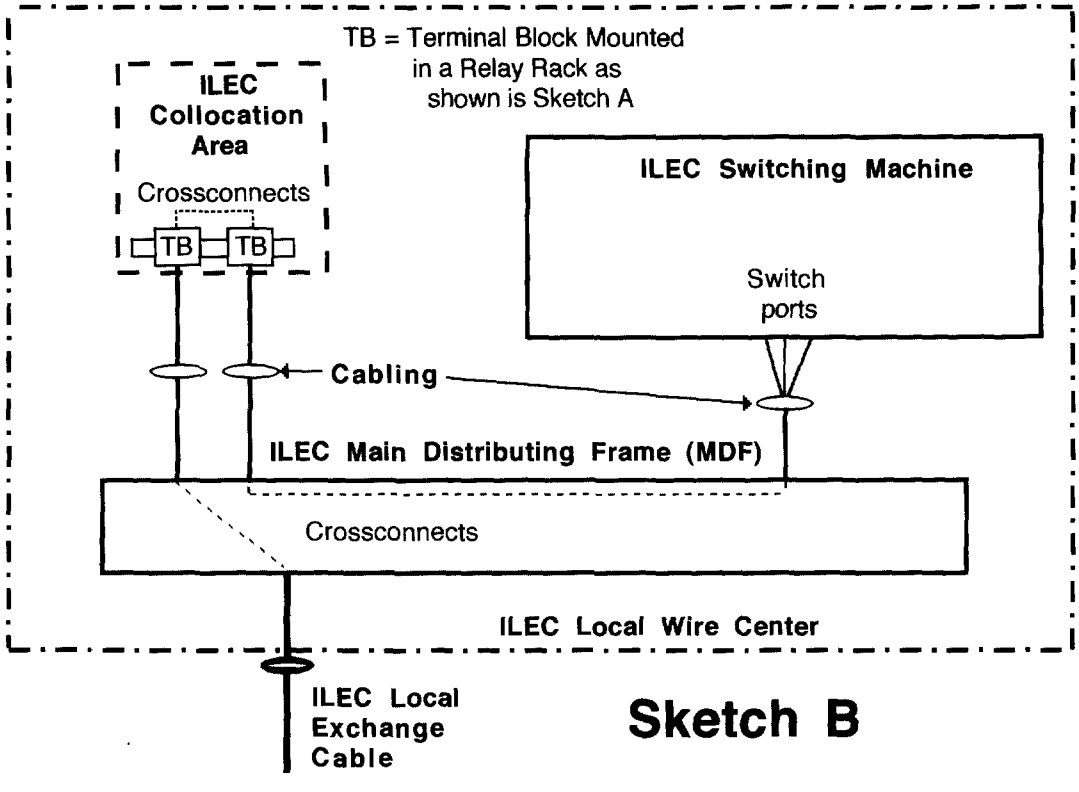
Notary Public

"OFFICIAL SEAL"
Katy K. Bhathena
Notary Public, State of Illinois
My Commission Expires 5-31-2000



Sketch A

Typical 23 inch, self-supporting relay rack requires about 2.5 square feet of floor space to mount



Sketch B

Note: All local exchange cables are normally terminated on the MDF.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing REPLY COMMENTS OF KMC TELECOM INC. IN OPPOSITION TO BELLSOUTH'S APPLICATION FOR INTERLATA AUTHORITY IN SOUTH CAROLINA were served to each on the attached mailing list, either by Hand Delivery (as designated with an asterisk (*)), or by First Class Mail, postage prepaid, this 14th day of November 1997.

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